No. 91-505

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

WILLIAM D. WEST,

Petitioner,

vs.

NORTHWEST AIRLINES, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN RESPONSE TO PETITION

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November 19, 1991

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QUESTIONS PRESENTED FOR REVIEW

Was the court of appeals correct when it held that state law claims for both punitive and compensatory damages were not *expressly* preempted, but that the claim for punitive damages was preempted because it conflicted with federal regulations which contemplate airline overbooking as an acceptable practice?

Where one section of the federal statute preserves state law remedies and a subsequently enacted section preempts all state law relating to an airline's rates, routes, or services, did the court of appeals err by holding that a state law claim for compensatory damages was not preempted because the state statute in question was one of general application and not one addressed exclusively to airlines?

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BRIEF IN RESPONSE TO PETITION

As requested by this Court in its letter dated November 14, 1991, Northwest Airlines, Inc. ("Northwest")[1] responds to the petition filed by William D. West ("West").

In addition to this response, on October 31, 1991, Northwest filed a Cross-Petition for a Writ of Certiorari in No. 91-734, and West filed a Brief in Response to Cross-Petition on November 12, 1991.

[1] Pursuant to Rule 29.1 of this Court, Respondent states that Northwest does not have corporate parents or subsidiaries, the shares of which are publicly traded.

BOTH THE PETITION AND CROSS-PETITION FOR CERTIORARI SHOULD BE GRANTED

In its decision below, the Ninth Circuit held that federal law preempted West's claims for punitive damages but did not preempt his claims for compensatory damages.

In his Brief in Response to Cross-Petition in 91-734 ("West Brief"), West agrees with Northwest's first point that the compensatory damages aspect of the decision below directly conflicts with the law of three other circuits. "We agree [that in failing to preempt state law on the issue of compensatory damages], a conflict exists which the Court should resolve" (West Brief at 1).

The West Brief also emphasizes the importance of this issue of federal law by describing the various methods used by the courts to analyze the relationship between sections 105 and 1106 of the Federal Aviation Act (49 U.S.C. App. §§ 1305, 1506), and the courts' conflicting decisions (West Brief in 91-734 at 2-5). Northwest agrees that the issues presented are significant and that intervention by this Court is appropriate and necessary to resolve the present confusion.

Northwest submits, however, that the West Petition for a Writ of Certiorari in No. 91-505 is incorrect where West argues that the holding of the court below, that punitive damages are preempted, conflicts with applicable decisions of this Court (Petition at 6). None of the cases cited for this proposition interprets the Federal Aviation Act. Moreover, and significantly, none of the cases involves the issue of express preemption.

In section 105, Congress commanded that "[n]o state . . . shall enact or enforce any law . . . relating to rates, routes, or services of any air carrier. . . ." In *Nader v. Allegheny*

Airlines, 426 U.S. 290 (1976), the Court construed section 1106 two years prior to the enactment of section 105, and thus did not have occasion to harmonize these two sections. *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984), a case which West states "best illustrates" his point "that punitive damages are not preempted under other, similar laws" (West Petition at 8), is distinguishable because it concerns issues of implied and conflict preemption but does not address express preemption. West's other cases are similarly distinguishable. *English v. General Electric Co.*, 110 S.Ct. 2270, 2279 (1990) (*Implied preemption* of nuclear safety field not applicable to state law claim for intentional infliction of emotion distress absent showing of clear and manifest congressional intent to preempt); and *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 186 (1988) (Notwithstanding *implied preemption* of nuclear regulatory field, state worker's compensation claim allowed where authorized by Congress). Where, however, Congress has expressly preempted a specific area, its directive must be enforced, even when the challenge to its supremacy comes from a state statute of general application.

In short, the court of appeals' decision that punitive damages are preempted does not conflict with applicable decisions of this Court.

Northwest does not contend that, pursuant to section 105 (49 U.S.C. App. § 1305), *all* state law is always preempted. Rather, it contends that pursuant to section 1106 (49 U.S.C. § 1506), all state law which is not preempted by section 105 is available. Therefore, only a small portion of state law — that which relates to rates, routes, or services — is expressly preempted.

Pursuant to the denied boarding regulation, 14 C.F.R. § 250.9(b), a passenger who qualifies for denied boarding

compensation may "refuse all compensation and bring private legal action . . . . [T]he passenger may decline the payment and seek to recover damages in a court of law or in some other manner." Northwest submits that this regulation does not authorize state law remedies, but rather, simply states that damages are recoverable in a court of law. Moreover, section 105 expressly preempts state law in this context since passenger boarding constitutes a service — as found by the court of appeals — within the meaning of section 105. A uniform federal law of compensatory damages should be used.

CONCLUSION

West's petition in 91-505 and Northwest's cross-petition in 91-734 should be granted.

Dated: November 19, 1991.

Respectfully submitted,

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